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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.J., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.F.,

Defendant and Appellant.

A156065

(San Francisco County
Super. Ct. No. JD16-3257)

S.F. (Mother) appeals the juvenile court's order summarily denying her Welfare and Institutions Code section 388¹ petition, and a subsequent order regarding visitation issued at the section 366.26 hearing. We affirm.

BACKGROUND

This is the fifth appellate proceeding in this dependency case, which began in August 2016 when the San Francisco Human Services Agency (the Agency) filed a section 300 petition as to Mother's daughter J.J. (Minor), then three years old. A summary of the background facts relating to prior appeals is set forth in *S.F. v. Superior*

¹ All undesignated section references are to the Welfare and Institutions Code.

Court (Oct. 17, 2018, A154876) [nonpub. opn.], and need not be repeated. As relevant here, the juvenile court bypassed reunification services for Mother in light of her previous failure to reunify with four of Minor's siblings, declined to place Minor with the maternal grandfather, summarily denied Mother's section 388 petition seeking reunification services after Mother's two older daughters had been returned to her custody, and set a section 366.26 hearing.

October 2018 Section 366.26 Report

In October 2018, the Agency filed a section 366.26 report recommending a permanent plan of legal guardianship with Minor's caregiver. The report stated that in the two years Minor had been with her caregiver, her behavior had markedly improved. Minor told the Agency she felt safe and loved with the caregiver, and repeatedly stated she wants to remain living with the caregiver. The caregiver was committed to the plan of legal guardianship and to raising Minor, and Minor was seen as a permanent member of the caregiver's family.

Minor had monthly supervised visits with Mother. Mother was sometimes present and engaged and sometimes distracted and on her phone. On one occasion, Mother's older son came to a visit without getting prior approval and, when the Agency social worker talked to Mother about it, Mother cursed and yelled at the social worker. The caregiver reported Minor had some behavioral difficulty after visits with Mother, and that Mother told Minor " 'to do bad things at the foster home.' " The Agency recommended that, after guardianship, Mother's visits be reduced to quarterly and be supervised at Rally Visitation Center, as the caregiver did not feel comfortable supervising Mother's visits.

Minor also had weekly supervised visits with the maternal grandfather and his fiancée. Minor reported that she "loves spending time" with them and "really looks forward" to the visits. Minor's caregiver understood the importance of maintaining the relationship and felt comfortable supervising the visits. Because the caregiver lived some distance from San Francisco, she proposed monthly meetings with the maternal grandfather halfway between them, which Minor's siblings could also attend. The

Agency recommended a minimum of one supervised visit per month with the maternal grandfather and his fiancée. Mother would not be permitted to attend these visits.

Mother's Section 388 Petition

On December 12, 2018—two days before the section 366.26 hearing—Mother filed a section 388 petition seeking reunification services and an order directing the Agency to assess the maternal grandfather's "new home." With respect to her request for reunification services, Mother stated she completed family maintenance services with the two older daughters in her care, had made substantial progress and changes in her life, and the Agency was recommending those cases be dismissed with custody to Mother. With respect to the second request, Mother stated the maternal grandfather's "new secure apartment in a gated complex has not been evaluated."

The juvenile court heard argument the following day on whether an evidentiary hearing should be granted.² The Agency and Minor's counsel both argued Mother had not met her burden to obtain an evidentiary hearing. The Agency argued Mother failed to make a prima facie case that reunification services would be in Minor's best interests.³ Minor's counsel agreed, arguing Minor "is in a stable home, she is doing really well.

² The Agency contends Mother failed to provide a reporter's transcript from this hearing. Mother filed a letter with this court noting the reporter's transcript had been omitted, and the transcript was subsequently filed. We note that the transcript was filed after both opening briefs were filed.

³ The Agency also argued there were no changed circumstances, emphasizing that "Mother did everything she could for many years . . . to undermine the guardianship" of the two older children currently in her care; as teenagers these children left their guardian's home, did not want to stay in a placement with their father, and "were whereabouts unknown for quite some time, although everyone believed they were living with their mother"; the Agency placed them with Mother "because we would rather have the girls placed somewhere rather than living on the streets," but they were "not doing very well," with "quite a number of contacts with the criminal justice system" and school attendance that was "sporadic at best"; and the Agency's recommendation of dismissal of those dependency cases was "not as a result of mother's cooperation or participation in services or any kind of positive change in her life," but was simply "the least worst alternative for these girls."

There is no evidence here that any changes would be in her interest” Minor’s counsel also argued that the maternal grandfather had not moved since the previous evidentiary hearing about placement with him. The juvenile court summarily denied the section 388 petition, finding Mother failed to make a prima facie showing that reunification services would be in Minor’s best interest, or that there were changed circumstances with respect to the maternal grandfather’s home.

Section 366.26 Hearing and Order

At the December 14, 2018 section 366.26 hearing, the Agency social worker was the only witness. On cross-examination by Mother’s counsel, the social worker testified she was aware that Mother believed Minor had been mistreated in the caregiver’s home. Mother’s allegations had been investigated and found to be unsubstantiated. Although Minor made a statement to another social worker that she loves visiting Mother, the testifying social worker believed quarterly visits would be appropriate because Minor expresses more interest in visiting with the maternal grandfather, Mother was sometimes on her phone during visits, and Mother argued with staff in front of Minor during visits.

Pursuant to an agreement by all counsel, Mother made a statement to the court instead of testifying under oath. Mother stated county counsel and Minor’s counsel kept Minor from her because they did not like her; Minor is being “abused” in the caregiver’s home; and that if anyone asked Minor if she wants visits with Mother, Minor would say she would.

Minor’s counsel argued that while Mother and Minor love each other, the focus is on permanency and Minor “has a good bond with this particular caregiver.” Minor’s counsel opined that quarterly supervised visits with Mother will be “adequate,” noting it was generous of the caregiver to agree to bring Minor to San Francisco for these visits. Agency counsel similarly argued. Mother’s counsel argued a better permanent plan would be placement with relatives and contended quarterly visits “are insufficient” to maintain the bond between Mother and Minor. The juvenile court ordered legal guardianship with Minor’s current caregiver, adopted the Agency’s recommendations with respect to visitation, and terminated dependency.

DISCUSSION

I. *Mother's Section 388 Petition*

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent’s request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) We review the juvenile court’s determination for abuse of discretion. (*In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

A. *Reunification Services*

The juvenile court did not abuse its discretion in finding Mother failed to make a prima facie showing that reunification services would promote Minor’s best interests. “On the eve of a section 366.26 hearing, the child’s interest in stability is the court’s foremost concern, outweighing the parent’s interest in reunification. Thus, a section 388 petition seeking reinstatement (or, in this case, initiation) of reunification services must be directed at the best interest of the child.” (*In re Ramone R., supra*, 132 Cal.App.4th at pp. 1348–1349.) Mother’s section 388 petition stated reunification services would be in Minor’s best interest because of the bond between Mother and Minor and Mother’s progress as demonstrated by the reunification with two of her older children.

In affirming the juvenile court’s denial of Mother’s previous section 388 petition seeking reunification services, this court reasoned: “Mother’s ‘conclusory’ [citation] assertions were insufficient to constitute a prima facie showing, especially in light of the

evidence that Minor was doing well in her current placement and that past visitation with Mother had been disruptive. The improbability that Mother would be able to reunify with Minor at such a late stage in the proceedings also supports the juvenile court's finding Mother failed to make a prima facie showing that granting the section 388 motion would be in Minor's best interests. Accordingly, the juvenile did not abuse its discretion in summarily denying Mother's motion." (*S.F. v. Superior Court, supra*, A154876.) This reasoning applies equally here.

B. *The Maternal Grandfather's Home*

Before the juvenile court denied placement with the maternal grandfather—a decision this court recently affirmed (*In re J.J.* (June 19, 2019, A154564) [nonpub. opn.]—the maternal grandfather had “moved to a more expensive private-security building” (*In re J.J., supra*, A154564.) Mother's section 388 petition acknowledged that the maternal grandfather's move took place before the prior order denying placement issued. The juvenile court did not abuse its discretion in finding Mother failed to make a prima facie showing of changed circumstances. We note that the juvenile court's decision to deny placement with the maternal grandfather was based on a number of factors unrelated to his residence. (*In re J.J., supra*, A154564.)

II. *Section 366.26 Visitation Orders*

A. *Mother's Visitation*

Mother contends the juvenile court abused its discretion in reducing her visits from monthly to quarterly. We disagree.

“Where, as here, a permanent plan of legal guardianship is ordered for a child, section 366.26, subdivision (c)(4)(C) governs parent-child visitation. Specifically, this provision states: ‘The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.’ (§ 366.26, subd.(c)(4)(C).)” (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1558.) “[I]t is clear from the statutory scheme governing dependency proceedings that the Legislature did *not* intend the ‘frequent as possible’ requirement to apply where, as here, a permanent placement

has been ordered for a child.” (*Ibid.*) Instead, when “reunification services have been bypassed and a permanent plan of guardianship has been ordered . . . , ‘the parents’ interest in the care, custody and companionship of the child are [sic] no longer paramount . . . [and] “the focus shifts to the needs of the child for permanency and stability.” ’ ” (*Id.* at p. 1559.) We review the juvenile court’s visitation order for abuse of discretion. (*Id.* at pp. 1557–1558.)

The juvenile court did not abuse its discretion. There was evidence that Mother made false allegations against Minor’s caregiver and told Minor “ ‘to do bad things’ ” at the caregiver’s home. In *In re S.H.*, the Court of Appeal affirmed an order of two visits per year with the mother, reasoning that “the juvenile court, before making this order, was properly focused on the minor’s interest in deepening her attachment to her new caregivers without unnecessary disruption from mother, who, according to the social worker, opposed the placement and acted at times with hostility towards minor’s caregivers.” (*In re S.H.*, *supra*, 197 Cal.App.4th at p. 1559.) Similarly, the juvenile court here was properly focused on continuing Minor’s attachment to her caregiver, in light of Mother’s past conduct attempting to undermine the placement.

B. The Maternal Grandfather’s Visitation

Mother argues the juvenile court abused its discretion in reducing the maternal grandfather’s visits from weekly to monthly. The Agency contends Mother lacks standing to raise this challenge, and we agree.

“Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor [citation]; nor can a parent raise the minor’s best interest as a basis for standing [citation]. Without a showing that a parent’s personal rights are affected by a ruling, the parent does not establish standing. [Citation.] To be aggrieved or affected, a parent must have a legally cognizable interest that is affected injuriously by the juvenile court’s decision. [Citation.] In sum, a would-be appellant ‘lacks standing to raise issues affecting another person’s interests.’ ” (*In re D.S.* (2007) 156 Cal.App.4th 671, 674.) Where an appellant “has made no showing that

his [or her] personal rights were implicated,” the appellant “lacks standing to tender the claim.” (*Ibid.*)

Mother has made no showing that her personal rights were implicated by the frequency of the maternal grandfather’s visits. The juvenile court’s order prohibited Mother from attending these visits, and Mother does not challenge this portion of the order on appeal. Mother chose not to file a reply brief responding to the Agency’s standing argument. While the failure to file a reply brief is not an admission the appeal lacks merit (*Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1218, fn. 4), we will not endeavor to respond to the Agency’s argument on Mother’s behalf (see *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1481). Mother lacks standing to raise this challenge.

DISPOSITION

The orders are affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A156065)